Appendix A

United States District Court, Northern District of California, Southern Division, November 29, 1965.
In Admiralty—No. 28869.

States Steamship Company, *Libellant*,

vs.

Steamship *Union Star* and China Union Lines, Ltd., *Respondents.*

(And Cross Libel.)

George B. Harris, D. J.:

Findings of Fact.

I.

The American steamship *Illinois* is a steel-hulled cargo vessel of approximately 7640 gross tons, which, on August 26, 1960, was operated by libellant States Steamship Company, a Nevada corporation.

II.

The Chinese flag vessel *Union Star* is a steel-hulled cargo vessel of approximately 3705 gross tons, which, on August 26, 1960, was owned and operated by China Union Lines, Ltd., a corporation organized under the laws of the Republic of Nationalist China.

III.

On the morning of August 26, 1960, the S. S. *Illinois*, being piloted by Saigon river pilot Phan-Huu Hai, descended the Saigon River from Saigon and after leaving

the Saigon River approached the Kumigawa buoy on course 143° true and when abeam of the buoy, turned south to course 180° true. After rounding the Kumigawa buoy the *Illinois* proceeded south on course 180° true until she was abeam of and approximately one mile off Cape Eperon, at which point course was changed to 150° true and speed reduced to slow ahead at 1128. The *Illinois* continued on course 150° true for about two minutes and then altered course to 145° true at 1130. At 1133 the *Illinois* stopped her engines and thereafter drifted until she was dead in the water at a position about 400 metres northwest of the *Korhyu* wreck buoy, at which position her pilot subsequently disembarked.

IV.

On August 26, 1960, the sea buoy which normally marks the safe and proper course for vessels entering and departing from the harbor was missing. Accordingly, it was necessary for vessels departing the harbor to follow a departure range formed by an imaginary line running from the 164′ knoll adjacent to Nui Ba-Lai, through a point 50 metres off Point Vung, and thence to sea. Before disembarking from the *Illinois* at 1139, Pilot Hai, with Captain Sorensen, drew this departure range on the *Illinois'* chart.

V.

On August 26, 1960, the *Union Star* entered the harbor from sea and at 0745 hours dropped anchor 1.2 or 1.3 miles due east of the Nui Vung Tau Lighthouse and remained anchored until 1136½ or 1137, when, having taken aboard Saigon river pilot Phan-Van-Dy, she heaved

in her anchor and got under way. As she rode at anchor until getting under way the *Union Star's* heading was north northwest. Upon heaving anchor the *Union Star,* being piloted by Pilot Dy, went full ahead on her engines and came to course 348° true and maintained this course for about three minutes, after which she changed course to 353° true. At 1140 the S. S. *Illinois* came full ahead on her engines. While the *Illinois'* precise heading when she got under way is in dispute the court finds that she was headed in a southerly direction, but moments thereafter came left slightly in order to place herself on the departure range line, signalling this slight alteration of course with a two-blast whistle signal. After this two-blast whistle signal was blown by the *Illinois* the *Union Star* blew a one-blast whistle signal, indicating a turn to her starboard. At this point risk of collision was a apparent and was not subsequently avoided, since the *Illinois,* after momentarily stopping her engines, went full ahead and turned hard left while the *Union Star* at 1142 went full astern on her engines, signalling this engine maneuver with a three-blast signal, and continued turning to the right, with the result that both vessels turned toward the east and thereafter collided as they came alongside each other on almost parallel courses. The collision, the precise location of which is in dispute, occurred at 1142½ or 1143 within the territorial waters of South Vietnam.

VI.

At the time of collision the *Illinois,* although she had men on her foredeck, had no one properly stationed and specifically assigned as a lookout and no one reported the

movements of the oncoming *Union Star* to her master. The court finds that lack of timely and accurate information and knowledge regarding the movements of the *Union Star* contributed to the ensuing collision.

VII.

The S. S. *Union Star,* from the time she got under way until the time of collision, had several men on the forecastle head, but the evidence indicates, and the court so finds, that these men were engaged in heaving in, washing down and securing the anchor and anchor chain. The court finds that there was no one aboard the *Union Star* who was posted and designated as a lookout and functioning as such unencumbered with other duties or responsibilities. No one reported the movements of the *Illinois* to those in charge of the *Union Star's* navigation. The court finds that the absence of timely and accurate information and knowledge aboard the *Union Star* regarding the movements of the *Illinois* contributed to the ensuing collision.

VIII.

The court finds that the faults of each vessel in failing to have a proper lookout, and in all other respects, were equal in degree and contributed in equal degree to the ensuing collision. The law of South Vietnam provides: (1) the navigation of vessels within South Vietnamese waters shall be governed by The International Rules of the Road and (2) that if the faults of vessels in collision are equal in degree, liability for the resulting damage shall be apportioned equally, and (3) if the two vessels are in fault, the liability of each vessel shall be in pro-

portion to the degree of the faults respectively committed. Provided that if, having regard to the circumstances, it is not possible to establish the degree of the respective faults, or if it appears that the faults are equal, the liability shall be apportioned equally.

IX.

At all relevant times the *S.S. Illinois* was being operated by libellant States Steamship Company under the terms of an operating differential subsidy contract with the United States Government, the terms of which required that the *Illinois'* collision repairs be effected in a shipyard in the United States.

X.

That the court finds that as a proximate result of the collision States Steamship Company has sustained allowable damages in the amount of $48,273.09 and respondent China Union Lines, Ltd., has sustained allowable damages in the amount of $6,398.14.

XI.

Respondent China Union Lines conducted an investigation of the collision shortly after it occurred and in July of 1961 security arrangements in the form of letters of undertaking were exchanged between libellant and respondent, which were followed by discussions and negotiations between proctors for libellant and proctors for respondent. In the circumstances the court finds that respondent China Union Lines, Ltd., was not prejudiced by States Steamship Company's delay in filing its libel and that States Steamship Company was not guilty of laches.

Conclusions of Law.

I.

This court has jurisdiction of the subject matter and the parties.

II.

States Steamship Company has not been guilty of laches.

III.

Both the *Illinois* and the *Union Star* violated Article 29 of The International Rules in failing to maintain a proper lookout.

IV.

Both the *Illinois* and the *Union Star* were equally at fault and the faults of each vessel contributed equally to the collision.

V.

The total damages should be divided and borne equally by libellant and respondent.

VI.

China Union Lines, Ltd., is liable to States Steamship Company in the amount of $20,937.48.

Appendix B

United States Court of Appeals
For the Ninth Circuit

China Union Lines, Ltd., and SS Union Star, Appellants, vs. States Steamship Company, a corporation, Appellee.	No. 20,920

June 6, 1967.

Before *Washington, Merrill, and Browning, Circuit Judges.

Washington, Senior Circuit Judge.

In the morning of August 26, 1960, in the mouth of the Saigon River, about one mile from shore, China Union Lines' motor vessel, The Union Star, registered by the Republic of China, was in collision with appellee's steam turbine-driven vessel Illinois, registered by the United States. Each vessel sustained substantial damage. A libel was filed by appellee in 1963 in the District Court for the Northern District of California, a cross-libel was filed by appellants, and the cause was tried in 1965.

The district court found that both vessels failed to maintain a proper lookout, that the lack of timely and accurate

*George T. Washington, Senior Circuit Judge, sitting by designation.

information and knowledge as to the movements of the other vessel on the part of both vessels contributed to the ensuing collision, that both were equally at fault and contributed equally to the collision, and that, in accordance with Vietnam law, the total damages under the International Rules of the Road should be divided equally. A final decree was entered December 1, 1965, holding that the appellee sustained damages from the collision of $48,273.09, that appellants sustained damages of $6,398.14, and that the appellee should recover from the appellants the amount of $20,937.48.

[1, 2] We have reviewed the record and have concluded that the district court's findings are supported by substantial evidence and are not clearly erroneous. It is not our function to weigh the evidence. McAllister v. United States, 348 U.S. 19, 20, 75 S.Ct. 6, 99 L.Ed. 20 (1954); City of Long Beach v. American President Lines (The President Van Buren), 223 F.2d 853, 855 (9th Cir. 1955); Benton v. United Towing Co., 224 F.2d 558 (9th Cir. 1955); Peterson v. United States, 224 F.2d 748, 749 (9th Cir. 1955).

Appellants contend that the district court improperly rejected evidence offered to establish that the costs of repair in the Orient were substantially less than those incurred by appellee in the United States; that appellee was under duty to minimize damages, and should have been limited in its recovery to damages based upon the Orient cost figures.

The district court rejected this offer of proof as irrelevant in light of the fact that appellee's vessel was under

government subsidy, a condition of which requires repair in the United States where conditions permit.

[3] We agree. Had appellee undertaken repair in the Orient, damages would not have been minimized but maximized, taking into consideration the connected loss (possible or probable) of the subsidy revenue.

We do not find any cause for reversal under other contentions made. The district court's judgment will be affirmed.

Appendix C

United States Court of Appeals
For the Ninth Circuit

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JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered June 6, 1967.